

**INTERGOVERNMENTAL AGREEMENT  
FOR FOREST HEALTH AND WATERSHED PROTECTION PROGRAM  
between  
the City of Flagstaff,  
the Arizona State Land Department,  
and the Arizona State Forestry Division**

This intergovernmental agreement ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013, between the City of Flagstaff ("CITY"), an Arizona municipal corporation, with offices at 211 W. Aspen Avenue, Flagstaff, Arizona, the Arizona State Land Department ("STATE LAND") and the Arizona State Forestry Division ("STATE FORESTRY").

**RECITALS**

- A. The CITY, STATE LAND, and STATE FORESTRY (which may be referred to herein as a "PARTY" or the "PARTIES") enter into this Agreement pursuant to A.R.S. § 11-951. STATE LAND's specific authority to enter into this Agreement is A.R.S. §§ 37-102(B) and 37-132(A). STATE FORESTRY's specific authority to enter into this Agreement is A.R.S. §§ 37-623(A), (C) and (F) and 37-642. The CITY's specific authority to enter into this Agreement is A.R.S. § 11-952.
- B. The CITY desires to enter into this Agreement for implementation of the Flagstaff Watershed Protection Project ("FWPP"), a voter-approved forest health and watershed protection program on Arizona State Land parcels within the City of Flagstaff that are within or impact the Rio de Flag watershed.
- C. The CITY operates, manages, and maintains Wildland Fire Management, including Hazard Mitigation operations, and fire services within the City of Flagstaff and the surrounding area.
- D. The PARTIES recognize the benefits of a forest restoration, program, including reduction of the risk of severe wildfires.
- E. The CITY recognizes that forest restoration includes the benefit of reduction in post-fire flooding that will protect the CITY's water supply.
- F. The PARTIES have a long-standing and successful partnership regarding land management, resource protection, and wildfire management, and wish to continue that partnership.
- G. The PARTIES intend to work together to develop plans and other operating documents that will describe in detail the work to be performed pursuant to this Agreement.

NOW, THEREFORE, pursuant to A.R.S. §11-952, authorizing agreements among two or more public agencies, and in consideration of the mutual covenants contained in this Agreement, the PARTIES agree as follows:

## **1. Duration and Termination of Agreement**

This Agreement shall be effective from the date of execution by the PARTIES and shall remain in effect for a period of five (5) years. This Agreement may be renewed by the PARTIES for additional one year periods upon mutual written agreement of the PARTIES, as required to complete all needed work.

## **2. Purpose of Agreement**

The purpose of this Agreement shall be to plan, conduct, monitor, and maintain forest treatment field operations on designated parcels of Arizona State Land Department land within the City of Flagstaff by conducting hazard mitigation work, to include modifying ground, ladder, and canopy fuels, and taking other useful actions in order to reduce the risk of severe wildfire and protect critical watershed(s) from fire and flood damage.

2.1 The work carried out pursuant to this Agreement shall include planning, environmental analysis, forest treatments (to include site set-up, field operations, and administration), monitoring, and maintenance efforts.

2.2 The Arizona State Trust Land parcels subject to this Agreement are identified in Exhibit A, attached. STATE LAND retains the right to lease, sell, transfer or permit the use of all or part of the lands in Exhibit A in order to fulfill its trust responsibilities under the Enabling Act, the Arizona Constitution and Title 37, Arizona Revised Statutes. In the event of sale, lease, or other disposition of land or products or other authorized use of state land in Exhibit A, such lands are automatically withdrawn from this agreement.

## **3. Method of Funding**

Specific actions that will occur, and require funding to accomplish, will be specified in an Annual Operating Plan.

3.1 STATE FORESTRY may utilize available federal grant forest treatment funds, in kind services, and other available funds to leverage funds provided by the CITY.

3.2 The PARTIES may provide their own work crews including CITY work crews and State Inmate Fire Crews to complete some or all of the work required pursuant to this Agreement, or they may elect to use other providers.

3.3 STATE LAND and STATE FORESTRY shall provide the CITY a complete list of all permits or other types of approvals required for performing work pursuant to this Agreement on State Trust Land parcels, and will secure those permits prior to any work being undertaken.

### **3.4 Revenue Projects –State Trust Beneficiaries**

The forest treatment projects envisioned under this agreement are not envisioned to produce revenue due to the current low wood values and high treatment costs. In general, small diameter non-commercial material will be removed. If, during any project planning, any Trust Land parcel project implementation has potential to provide revenue to the State Trust, then STATE LAND shall be consulted for disposition requirements.

#### **4. Plan Development**

The PARTIES shall work jointly to produce two specific planning documents:

4.1 **Summary of Current Conditions** (“SCC”). Prior to June 30, 2013, for all State designated lands covered by this Agreement, a SCC shall be developed by STATE FORESTRY, reviewed by the CITY, revised if necessary, and mutually approved by all PARTIES signatory to this Agreement.

4.1.a The SCC shall identify what treatments are needed on each parcel, to include acreage, maps, actions needed to develop the project, and a priority of treatment by parcel.

4.2 **Annual Work Plan** (“AWP”). Each year in which this Agreement remains in effect, the PARTIES shall jointly prepare an AWP. The AWP shall set forth the specific details of the work to be carried out and will include specific details concerning parcels, acreage, activities, responsible entity, expected costs and which party will fund what activities, timing of work, and any other necessary and proper matters.

4.2.a The first AWP shall be completed and approved by all PARTIES at the time the SCC is completed/approved. Thereafter, it will be completed no later than February 1<sup>st</sup> each year, to be effective July 1<sup>st</sup>. Each AWP shall extend for the following twelve (12) months.

4.2.b The AWP shall identify any services requiring a payment from one PARTY to another pursuant to paragraph 3.1. The payment of funds from either entity to the other shall occur as follows:

4.2.b.1 All billed services provided will be in accordance with the AWP.

4.2.b.2 The invoice will clearly identify locations, timeframes, final accomplishments and what personnel ( State employees, crews, or contractors) were used to accomplish the task.

4.2.b.3 All invoicing will occur within 30 days of final site approval (to be done by the paying entity) with payment to occur within 30 days of receipt of the invoice.

4.3 The extent of work performed in the AWP shall be limited by the amount of funding available to conduct the work.

4.4 It is the intent of the PARTIES to complete the SCC and the AWP in a timely manner, however in the event that the deadlines are not met the PARTIES will work cooperatively to complete the SCC and AWP.

#### **5. Oversight and Review**

5.1 All operations carried out pursuant to this Agreement shall be undertaken at the direction of, and with approval and oversight from the PARTIES.

5.2 STATE FORESTRY shall provide field operations management and act as the liaison between the CITY and STATE LAND concerning operations carried out pursuant to this Agreement.

5.3 At the end of each calendar year, the PARTIES shall conduct an Adaptive Management Review (“AMR”). The purpose of the AMR shall be to determine and document whether elements of the AWP were successfully completed, with the goal of improving efficiency.

## **6. Protection of Resources**

6.1 The PARTIES shall make all reasonable efforts to avoid damage to the resources associated with the Arizona State Trust parcels.

6.2 To the extent practicable, activities carried out pursuant to this Agreement shall not result in the removal of commercial products, unless such removal is identified in the AWP, and is consistent with applicable Arizona Revised Statutes provisions and any related administrative procedures required by STATE LAND.

## **7. Indemnification**

Each PARTY (as “Indemnitor”) agrees to indemnify, defend, and hold harmless each other PARTY (as “Indemnitee”) from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney’s fees) (collectively referred to as “Claims”) arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees, or volunteers.

## **8. Dispute Resolution**

### **8.1 Mediation**

The PARTIES to this Agreement agree to resolve all disputes arising out of or relating to this Agreement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes.

### **8.2 Litigation and Attorney’s Fees**

Except as otherwise agreed upon by the PARTIES, any litigation brought by either PARTY against the other PARTY to enforce the provisions of this Agreement shall be filed in Coconino County Superior Court, Flagstaff, Arizona. In the event that any action at law, or in equity, is instituted between the PARTIES in connection with this Agreement, the prevailing PARTY in the action shall be entitled to an award of costs, including reasonable attorney’s fees and court costs, from the non-prevailing PARTY.

## **9. Principal Contacts.**

Individuals listed below are authorized to act in their respective areas for matters related to this Agreement, and to receive notices or other information from the other PARTIES.

### **CITY Project Manager Contact**

Paul Summerfelt  
Wildland Fire Management Officer  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, AZ 86001  
Phone: 928.213-2509  
FAX: 928.213.2599  
Email: psummerfelt@flagstaffaz.gov

### **STATE FORESTRY Project Manager Contact**

Kevin Boness  
District Forester  
AZ State Forestry Division  
3950 Lake Mary Rd  
Flagstaff AZ 86001  
Phone: 928-774-1425  
FAX: 928-779-2143  
Email: kevinboness@azsf.gov

#### CITY Administrative Contact

Stacey Brechler-Knaggs  
Grants Manager  
City of Flagstaff  
211 W. Aspen Avenue  
Flagstaff, AZ 86001  
Phone: 928.213-3227  
FAX: 928.779.7656  
Email: sknaggs@flagstaffaz.gov

#### STATE FORESTRY ADMINISTRATIVE Contact

Tina Waddell  
Financial Administrator  
AZ State Forestry Division  
1110 W. Washington, Suite 100  
Phoenix AZ 85007  
Phone: 602-771-1400  
FAX: 602-771-1421  
Email: tinawaddell@azsf.gov

#### STATE LAND Contacts

Vanessa Hickman  
State Land Commissioner  
1616 W, Adams  
Phoenix, Arizona 85007  
Phone: 602-542-4621  
FAX: 602-542-2590  
Email: vhickman@azland.gov

Stephen Williams  
Natural Resources Director  
1616 W, Adams  
Phoenix, Arizona 85007  
Phone: 602-542-4621  
FAX: 602-542-2590  
Email: swilliams@azland.gov

### **10. Authorization to Contract**

Each PARTY represents and warrants that it has full power and authority to enter into this Agreement and perform its obligations under this Agreement and has taken all required acts or actions necessary to authorize the same.

### **11. Integration; Modification**

Each PARTY acknowledges and agrees that it has not relied upon any statements, representations, agreements or warranties, except as expressed in this Agreement, and that this Agreement constitutes the PARTIES' entire agreement with respect to the matters addressed in this document. All prior or contemporaneous agreements and understandings, oral or written, with respect to such matters are superseded and merged in this Agreement. This Agreement may be modified or amended only by written agreement, signed by or for all PARTIES, and any modification or amendment will become effective on the date so specified.

### **12. Cancellation for Conflict of Interest**

Pursuant to A.R.S. §38-511, a PARTY may cancel this Agreement without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of a PARTY is, at any time while the Agreement or any extension of the Agreement is in effect, an employee or agent of the other PARTY of the Agreement in any capacity or as a consultant to the other PARTY of the Agreement with respect to the subject matter of this Agreement.

**13. Waiver**

No failure to enforce any condition or covenant of this Agreement will imply or constitute a waiver of the right of a PARTY to insist upon performance of the condition or covenant, or of any other provision of this Agreement, nor will any waiver by a PARTY of any breach of any one or more conditions or covenants of this Agreement constitute a waiver of any succeeding or other breach under this Agreement.

**14. Termination**

Either PARTY may terminate this Agreement by giving the other PARTY sixty (60) days written notice.

**15. No Third Party Beneficiaries**

This Agreement is solely for the benefit of the PARTIES. The PARTIES do not intend by any provision of this Agreement to create any rights in any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under this Agreement or otherwise upon anyone other than the PARTIES.

**16. Records Retention and Audit**

Pursuant to A.R.S. § 35-214, the PARTIES shall retain and shall contractually require any subcontractor to retain all data, books and other records ("records") relating to this Agreement for a period of five years after completion of this Agreement. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the PARTIES shall produce the original of any or all such records.

**17. Non-Appropriation**

Every payment obligation of the State under this Agreement is conditioned upon the availability of funds continuing to be appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

IN WITNESS WHEREOF, the PARTIES have caused this Agreement to be executed as of the day and year first written above.

**City of Flagstaff**

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Attest:

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City Clerk

Approved as to Form:

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City Attorney

**Arizona State Land Department**

By:

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant Attorney General

**Arizona State Forestry Division**

By:

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Assistant Attorney General